Janet Lynn, Inc. *and* **New York Coat, Suit, Dress, Rainwear & Allied Workers' Union, International Ladies' Garment Workers' Union, AFL-CIO.** Case 2-CA-18187

February 12, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

Upon a charge filed on July 6, 1981, by New York Coat, Suit, Dress, Rainwear & Allied Workers' Union, International Ladies' Garment Workers' Union, AFL-CIO, herein called the Union, and duly served on Janet Lynn, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint on August 20, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent thereafter failed to file an answer to the complaint.

On November 3, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment based on Respondent's failure to file an answer. Subsequently, on November 4, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter failed to file a response to the Notice To Show Cause and the allegations in the Motion for Summary Judgment accordingly stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, Respondent was duly served with the complaint and notice of hearing on August 20, 1981, but failed to file an answer. Thereafter, by letter of September 23, 1981, which was duly served on Respondent, the General Counsel informed Respondent that it intended to move for summary judgment since no answer had been filed. However, the General Counsel indicated that an answer could be filed by October 8, 1981, with an accompanying explanation for the delay in filing the answer. Respondent has thereafter failed to file an answer and, as noted above, Respondent has also failed to file a response to the Notice To Show Cause. Accordingly, under the rule set forth above, no good cause having been shown for the failure to file an answer to the complaint, the allegations of the complaint are deemed admitted and found to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a New York corporation with its principal office and place of business in the Bronx, New York. Respondent is engaged in the manufacture and nonretail sales and distribution of ladies' clothing and related products. Respondent, in the course and conduct of its business operations, annually provides services valued in excess of $50,000 to various enterprises within the State of New York, which are, in turn, directly engaged in interstate commerce, meeting one of the Board's standards for the assertion of jurisdiction exclusive of indirect outflow or indirect inflow.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

New York Coat, Suit, Dress, Rainwear & Allied Workers' Union, International Ladies' Garment Workers' Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

On or about June 29, 1981, Respondent, acting through its statutory supervisor and agent, Elizabeth Figuero, at its Bronx, New York, facility, interrogated its employees concerning their membership in, activities on behalf of, and sympathy for the Union, and also threatened its employees with discharge if they joined, supported, or assisted the Union. We find that by the aforesaid conduct Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them under Section 7 of the Act and that, by such conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

On or about June 29, 1981, Respondent discharged its employee Carmen Cruz and since that date has failed and refuse to reinstate, or to offer to reinstate, her to her former position of employment. Respondent discharged Cruz and has since failed to reinstate her, or to offer her reinstatement, because she joined, supported, or assisted the Union, and in order to discourage employees from engaging in union activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection. By such conduct, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), and Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discharged and refused to reinstate Carmen Cruz, we shall order that Respondent offer Cruz immediate and full reinstatement to her former position, or, if such position no longer exists, to a substantially equivalent position without prejudice to her seniority and other rights and privileges previously enjoyed. We shall also order that Respondent make Carmen Cruz whole for any loss of pay she may have suffered because of her unlawful discharge, such backpay to be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest to be computed as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Respondent, Janet Lynn, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating its employees about their union activities and by threatening its employees with discharge if they joined, supported, or assisted the Union, Respondent violated Section 8(a)(1) of the Act.

4. By discharging and refusing to reinstate employee Carmen Cruz because she engaged in union activities, Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, and is discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and, by such acts, Respondent has violated Section 8(a)(3) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Janet Lynn, Inc., Bronx, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union activities and threatening them with discharge if they support, join, or assist the Union.

(b) Discharging and refusing to reinstate employees because they engage in union activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will efffectuate the policies of the Act:

(a) Offer Carmen Cruz immediate and full reinstatement to her former position, or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights and privileges previously enjoyed and make her whole for any loss of earnings she may have suffered by paying her a sum of money to be determined in accordance with the formula set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and compute the amount of backpay due under the terms of this Order.

(c) Post at its Bronx, New York, facility copies of the attached notice marked "Appendix."[1] Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[1] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT interrogate our employees concerning their union activities.

WE WILL NOT threaten our employees with discharge if they support, join, or assist a union.

WE WILL NOT discharge and refuse to reinstate our employees because they engage in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer Carmen Cruz immediate and full reinstatement to her former position, or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights or privileges previously enjoyed, and WE WILL make her whole for any loss of earnings she may have suffered by reason of the discrimination against her, plus interest.

JANET LYNN, INC.